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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JEREMY S. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

D053120

(Super. Ct. No. J516616A-D)

APPEAL from a judgment of the Superior Court of San Diego County, Carol Isackson, Judge. The judgment is reversed and remanded with instructions.

A.D. appeals a judgment of the juvenile court terminating her reunification services for her four minor children, Jeremy S., Jonah K., Joy K. and J.B. (minors). A.D. contends the juvenile court should have held a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118) after she raised concerns dealing with the adequacy of her court appointed trial counsel. We reverse the judgment and remand with instructions.

FACTUAL AND PROCEDURAL BACKGROUND

The San Diego County Health and Human Services Agency (Agency) filed petitions in April 2007 on behalf of the minors under section 300, subdivisions (b) and (g) of the Welfare and Institutions Code. The petitions alleged A.D. was unable to care for her children because she suffered from a psychotic disorder. The petitions further alleged A.D. did not properly take her medication as instructed to control her mental illness. According to the Agency's detention reports, A.D. acted violently towards her children after hearing voices. A.D. pushed then three-year-old Joy to the ground and she attempted to choke nine-year-old Jeremy. At a detention hearing, the juvenile court detained the minors in out-of-home care and ordered A.D. to submit to a psychological evaluation.

A.D. participated in a psychological evaluation conducted by Robert Kelin, Psy.D. A.D. admitted to abusing methamphetamines for about six years and marijuana about 16 years. She further admitted to suffering from hallucinations and paranoid thoughts. She had been hospitalized at least six times for hearing voices. Dr. Kelin referred A.D. for a psychiatric consultation.

Thomas Barnes, Ph.D., met with A.D. and diagnosed her with suffering from a chronic form of schizophrenia of the paranoid type. He believed her illness would likely interfere with her ability to safely provide for the needs of the minors. A.D. also met with Judy Matthews, Ph.D. Dr. Matthews did not believe A.D. would benefit from reunification services because A.D. remained actively psychotic despite her medication. She believed the minors' needs would be better served by being placed with relatives.

After considering the Agency's reports and psychological evaluations, the court removed the minors from A.D.'s care and placed them with relatives in Florida.

On December 18, 2007, A.D. submitted a letter addressed to the trial judge. In her letter, she stated she wanted a continuance of the matter "until I am able to provide my own attorney or represent myself in the court of law. Both the Agency and attorneys have not properly informed me of my rights and I would like to revoke and/or appeal my case." Two days later, the court received a second letter from A.D. also addressed to the trial judge. She indicated she had completed all her services and claimed there was "no one representing me as the loving and caring mother that I am."

In a February 2008 six-month review report, the social worker recommended the court terminate services. That month, the police arrested A.D. on charges of battery on a police officer, obstruction and resisting and threatening to cause death. The social worker indicated it had been about one month since she last communicated with A.D. The social worker referred to the psychological evaluations stating A.D. would most likely not benefit from reunification services, and her actions showed she was not stable enough to have the minors safely returned to her care.

At the six-month review hearing, A.D. appeared with an attorney who specially appeared for her previous counsel. The court did not address A.D.'s letters concerning her representation. After reviewing the Agency's reports, the court found A.D. did not regularly participate in services, her mental health issues remained unresolved and she had not been compliant with her medication. The court terminated A.D.'s reunification services. A.D. timely filed a notice of appeal.

DISCUSSION

A.D. argues the court erred by not holding a *Marsden* hearing to address her concerns regarding representation by her trial counsel during the dependency proceedings. The Agency agrees that to the extent A.D. has not forfeited this issue, the court should have conducted an inquiry into the reasons for A.D.'s concerns regarding her attorney.

A

In a criminal case, when a defendant requests substitute counsel, the trial court must permit the defendant to explain the specific reasons why the defendant believes current counsel is not adequately representing him or her. (*Marsden, supra*, 2 Cal.3d at pp. 123-124.) Although no formal motion is necessary, there must be " 'at least some clear indication by defendant that he wants a substitute attorney.' " (*People v. Mendoza* (2000) 24 Cal.4th 130, 157, quoting *People v. Lucky* (1988) 45 Cal.3d 259, 281, fn. 8; *People v. Valdez* (2004) 32 Cal.4th 73, 97.) The court need not grant the request for substitution of counsel absent a showing that denial would substantially impair the defendant's right to the assistance of counsel. (*Valdez*, at p. 123; *People v. Turner* (1992) 7 Cal.App.4th 913, 917.)

In a dependency proceeding, the parents have a statutory and a due process right to competent counsel. (Welf. & Inst. Code, § 317.5; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1153 & fn. 6.) Juvenile courts, relying on the *Marsden* model, have permitted parents to air their complaints about current counsel and request appointment of new counsel. When counsel is appointed, the parents must have a

mechanism for challenging the representation when they perceive inadequacy or the right to counsel is meaningless. (*In re James S.* (1991) 227 Cal.App.3d 930, 935, fn. 13.) An exhaustive Marsden hearing is not required in a dependency action; it is only necessary that the juvenile court "make *some* inquiry into the nature of the complaints against the attorney." (*Ibid.*)

B

A.D. did not file a formal motion but instead submitted two letters to the trial court indicating she had concerns about her representation during the dependency proceedings. On December 17, 2007, A.D. filed the first letter with the court stating, "[t]here are circumstances and outside factors that have been influencing my case and I am asking that this order be put off until I am able to provide my own attorney or represent myself in the court of law. Both the Agency and attorneys have not properly informed me of my rights and I would like to revoke and/or appeal my case." Three days later, A.D. filed a second letter stating she had, "no one representing me as the loving and caring mother that I am." At the February 2008 six-month review hearing, the court did not address A.D.'s letters.

Although the second letter does not make reference to specific complaints against her attorney, A.D.'s first letter raises questions as to the adequacy of her representation she had received and that she would like new counsel. When a parent seeks to discharge his or her appointed counsel and have another attorney appointed, the trial court must permit him or her to explain the basis of his or her contention and relate specific instances of the attorney's inadequate performance. (*Marsden, supra*, 2 Cal.3d at p. 124.) As a

result, these letters could be construed as a motion for a *Marsden* hearing. We conclude that under *Marsden*, the trial court should have made an inquiry into the causes of A.D.'s dissatisfaction with her court appointed counsel as set forth in her letters. (See *In re James S.*, *supra*, 227 Cal.App.3d at p. 935, fn. 13; See also *In re Ann S.* (1982) 137 Cal.App.3d 148, 150 [*Marsden* right applies in dependency proceedings].)

DISPOSITION

The judgment terminating reunification services is reversed and the matter is remanded for the purpose of holding a *Marsden* hearing. If the *Marsden* motion is granted, the trial court shall appoint substitute counsel to represent appellant at a new section 366.21 six-month review hearing under Welfare and Institutions Code. If the *Marsden* motion is denied, the trial court shall reinstate the judgment. (See *In re Ann S.*, *supra*, 137 Cal.App.3d at pp. 150-151.)

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.